

REMARKS

DOUBLE PATENTING REJECTION

Claims 1-4, 8-14, 18-20 were provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-4, 7-14, 16-20 of copending Application Serial No. 10/186,787.

Since this is a provisional non-statutory obviousness-double patenting rejection over U.S. Serial No. 10/186,787, which has not yet issued, Applicant will wait until allowance of U.S. Serial No. 10/186,787 prior to filing a terminal disclaimer. Note, however, if the present application issues before U.S. Serial No. 10/186,787, then a terminal disclaimer would not be needed.

REJECTIONS UNDER 35 U.S.C. 103

Claim 1 has been amended to incorporate subject matter of claim 5, which was indicated by the Office Action as being allowable. Claim 11 has also been amended to incorporate subject matter of claim 15, which was indicated by the Office Action as being allowable. Amendments to the form of claims 1 and 11 have been made to address consistency issues.

Independent claim 9 has been amended to recite that the various acts of claim 9 are performed by a mobile access terminal. As amended, it is believed that claim 9 is non-obvious over Sinduhushayana and Cheng. As conceded by the Office Action, Sinduhushayana fails to disclose the computing act of claim 9. 3/7/2006 Office Action at 6. However, the Office Action relied upon Cheng as disclosing this feature. *Id.* It is noted that Cheng relates to performing reverse outer loop power control by a *base station* 201. Cheng, Figures 1, 2; 4:1-3. A controller 305 in the base station 201 of Cheng updates the signal-to-noise ratio target. Cheng, 4:21-23. The operation of the controller 305 in the base station 201 for updating the signal-to-noise ratio target is described in greater detail in Figures 3A-3B and 4A-4B of Cheng. Cheng, 4:27-30. The updating of a signal-to-noise ratio target performed in Cheng according to Eq. 3 is performed by a base station, not by a mobile access terminal as recited in claim 9. Therefore, the hypothetical combination of Sinduhushayana and Cheng does not teach or suggest all elements of claim 9.

Moreover, there would have been no motivation or suggestion to combine the teachings of Sinduhushayana and Cheng to achieve the claimed subject matter. The teachings of Cheng relating to outer loop control by a base station are inapplicable to the teachings of

Sinduhushayana and to the claimed invention. A person of ordinary skill in the art would not have been motivated to combine the teachings of Sinduhushayana and Cheng to achieve the claimed invention. Therefore, it is respectfully submitted that claim 9 is non-obvious over Sinduhushayana and Cheng.

Amended independent claim 19 is similarly allowable over the asserted combination of Sinduhushayana and Cheng.

Dependent claims, including newly added dependent claims 21 and 22, are allowable for similar reasons.

Allowance of all claims is respectfully requested. The Commissioner is authorized to charge any additional fees and/or credit any overpayment to Deposit Account No. 20-1504 (NRT.0145US).

Respectfully submitted,

Date: May 25, 2006



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